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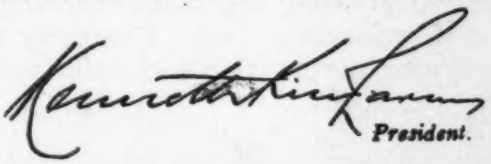
THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

Venue in Suits Against Corporations

The Texas statutes allow suit against a corporation in any county in which the cause of action arose. It was urged that this provision contravenes the equal protection clause of the Fourteenth Amendment to the Federal Constitution since unincorporated individuals are assumed not to be "subject to suit outside their domiciliary counties in a similar situation." The United States Supreme Court is unable to say that the provision is not reasonable. "In deciding whether a corporation is denied the equal protection of the laws when its creator establishes a more extensive venue for actions against it than is fixed for private citizens we have to consider not a geometrical equation between a corporation and a man but whether the difference does injustice to the class generally, even though it bear hard in some particular case, which is not alleged or proved here." Bain Peanut Co. et al. vs. Pinson et al., Docket No. 49, October Term, 1930, decided February 24, 1931. Mr. Justice Holmes who delivered the opinion of the court, said further, in the course thereof: "The interpretation of constitutional principles must not be too literal. We must remember that the machinery of government would not work if it were not allowed a little play in its joints."



President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

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Contents for April

Talks on Foreign Corporations

"Doing business" by a corporation in a foreign state may be described as engaging therein in an enterprise characterized by some permanence and continuity, that is, transacting within the state some substantial part of its ordinary business, continuous in the sense that it is distinguished from merely casual or occasional transactions. In applying this definition a large number of cases hold that a single act or isolated transaction does not constitute "doing business" in a particular state so as to require qualification. In some cases the holding is simply that a single act is not "doing business," while in others intent is taken into consideration and the corporation may be brought within the state in doing a single act if such act is the first of a series of acts or if the corporation intends to do other acts.

In connection with the application of this rule, the following examples may be noted:

In Alabama foreign corporations are prohibited from doing a single act of business in that state, if done in the exercise of their corporate functions, before complying with the laws regulating their admittance. (Muller Manufacturing Co. v. First National Bank, 176 Ala. 229).

In an Idaho case it is said that "the cases holding that a single isolated transaction is not to be considered doing or carrying on of business within the state are cases where the matter involved was a single transaction without any intention on the part of the foreign corporation of continuing to transact other acts of business within the state." (Donaldson v. Thousand Springs Power Co. 29 Ida. 735; 162 Pac. 334).

In a South Dakota case it is held that a single transaction constitutes "doing business," unless for some reason such transaction falls within one of the exceptions under the law, the party claiming the benefit of the exception having the burden of showing such fact. (Tripp State Bank of Tripp v. Jerke, 188 N. W. 314).

In the case of Cooper Manufacturing Company v. Ferguson, 113 U. S. 727, the United States Supreme Court says: "Reasonably construed, the constitution and statute of Colorado forbid, not the doing of a single act of business in the State but the carrying on of business by a foreign corporation without the filing of the certificate and the appointment of an agent as required by statute. The constitution requires the foreign corporation to have one or more known places of business in the State before doing any business therein. This implies a purpose at least to do more than one act of business. For a corporation that has done but a single act of business and purposes to do no more, cannot have one or more known places of business in the State."

Therefore while it may be said that the transaction of a single act does not generally constitute "doing business" care should be taken as to the circumstances surrounding the commission of the single act. It is felt that the rule holding *intent* as the measure, is, perhaps, the best one to apply in these cases,—for, if a corporation intends, after the doing of a single act, to continue its operations there seems no logical reason why such single act should not bring the corporation within the state.

Domestic Corporations

California.

Transactions between corporations having common directors not void but voidable only if fraud, lack of good faith, or some breach of trust, be shown. A minority stockholder of a corporation seeks to enjoin a purchase by the company of all the properties of another corporation. The five individual defendants constituted the board of directors of each of the involved corporations. The offer to sell was authorized by the board of the selling company, such being unanimously ratified by its stockholders. The offer was accepted by the board of the purchasing corporation, the acceptance being ratified by a large majority of its stockholders, plaintiff-appellant, holding 385 shares of a total of 1950, dissenting. The California District Court of Appeal, First District, Division 2, affirms the judgment below for defendants. The court says, after referring to California Jurisprudence, Vol. 6, § 449, page 1077, and to numerous cases: "A transaction between two corporations having common directors, which is not ultra vires, cannot be prevented or avoided by a minority stockholder except he be able to prove actual or constructive fraud, injury, or damage. In the instant case plaintiff alleged injury and damage. The court found against him, and, if the findings of the court are sustained by the evidence, plaintiff's action must fail." The minority stockholder is seeking to avoid the business judgment of the board of directors because of the common directorship feature. The court says that plaintiff "has made no showing which would warrant a court of equity to interfere with the management of the corporation business." Frank H. Buck Co. vs. Tuxedo Land Co. et al., 293 P. 122. Frederick W. McNulty, Goldman & Altman, and Leland S. Fisher, all of San Francisco, for appellant. Wright, Wright & Stetson, of San Francisco, for respondents.

Georgia.

Petition by minority stockholder for appointment of receiver and dissolution will not be granted, ordinarily. The Supreme Court of Georgia says: "Where a minority stockholder in a corporation files an equitable petition against the corporation and the individual members thereof, who are majority stockholders, for appointment of a receiver, for audit of the books of the corporation, for dissolution of the corporation and settlement of its affairs, and that the defendants be enjoined from altering the status of the business of the corporation, the internal management of the corporation will not be interfered with by the court at the instance of a minority stockholder unless the majority stockholders are acting without the charter powers, or a strong case of mismanagement or fraud is shown." Affirming the judgment below sustaining the demurrers to the petition the court says that it finds no occasion for such interference, here. Smith vs. Albright-England Co. et al., 156 S. E. 313. Hoke Smith and Spence and Spence, all of Atlanta, for plaintiff in error. A. S. Grove, of Atlanta, for defendants in error.

Illinois.

Return of officer serving summons on corporation. "Section 8 of the Practice Act (Smith-Hurd Rev. St. 1929, c. 110) provides for service of summons on corporations by leaving a copy with the president of the corporation, if he can be found in the county where suit is brought, or, if the president be not found in that county, then by leaving a copy with any clerk or certain other specified agent or any agent of the company found in the county. This service on the clerk or other agent is a substituted service made necessary by the inconvenience to those having causes of action against the corporation if they must go to a county where the president may be found or wait until he comes into the county where the cause of action arose or the plaintiff resides. If the process is served on the agent of the corporation other than the president, the return of the officer must show that the president was not found in the county or the court will not acquire jurisdiction of the corporation." Thus the Supreme Court of Illinois in this action concerning which nothing further need be said here. Werner vs. W. H. Shons Co., 173 N. E. 486. James A. Watson, of Elizabethtown, and McKenna & Harris, of Chicago (James J. McKenna, of Chicago, of counsel), for plaintiff in error. B. F. Anderson, of Golconda (John W. Browning, of Harrisburg, of counsel), for defendant in error.

Iowa.

Quarrying and crushing stone is not manufacturing. The principal question here involves corporation taxes. Initially it was necessary to determine whether or not the plaintiff corporation is a "manufacturer." That phase only of the case is covered here. Reversing the decree below the Supreme Court of Iowa sustains plaintiff's contention that it is not. "There is no dispute as to the method of operation of the appellant's plant. Under the stipulation, the 'process performed in the plant consists of blasting limestone from a natural deposit and the crushing and screening of the limestone to merchantable sizes and loading it into cars, trucks, and wagons from the plant." Three judges dissent, believing that under the particular language of the statute the company was engaged in manufacturing "crushed rock." Iowa Limestone Co. vs. Cook, County Auditor, et al., 233 N. W. 682. Brammer, Brody, Charlton & Parker, of Des Moines, for appellant. Carl S. Missildine, George Comfort, C. A. Weaver, and C. R. S. Anderson, all of Des Moines, for appellees.

Maryland.

Stockholder's liability for unpaid stock subscription in event total authorized stock has not been issued. The Maryland corporation law now makes it possible to provide in a corporate charter for the issuance of stock from time to time until the maximum authorized has been issued. The charter of the corporation here involved carries such a provision. The Court of Appeals of Maryland, affirming the

judgment below, says that no such authority could have been given prior to the enactment of Chapter 596, Laws of 1916 (1924 Code, Art. 23) and states that decisions under the prior law relied on by the defendant-appellant as justification for non-payment on being sued by his corporation (receiver later substituted, on suggestion) on account of his unpaid stock subscription, are no longer controlling on the questions here at issue. The finding is that under the now law and given such a contract provision as is present here a subscriber to stock is liable to the corporation for the full subscription price, he not being entitled to assume that operations would not begin until the entire amount of authorized stock was taken or that there exists an implied understanding that the entire amount fixed by the charter is necessary for the successful prosecution of the business for which the company was incorporated. Tyler vs. Cambridge Furniture Co.'s Receivers, 152 A. 896. T. Sangston Insley, of Cambridge, for appellant, William D. Gould, 3d., of Cambridge, for appellees.

Massachusetts.

Right of stockholders to examine books of their corporation. Action in equity by stockholders against their (Massachusetts) corporation and its treasurer to permit an examination of the corporation's stock and transfer books and other books and records, their request to the treasurer to that end having been denied. The denial is admitted but justified on ground that the examination is sought for personal advantage of the plaintiffs and for purposes injurious to the interests of the corporation. The master, to whom the matter was referred, found good faith on the part of plaintiffs. A decree was entered ordering the defendants to exhibit all the books with permission to take copies and transcripts. On appeal the Massachusetts Supreme Judicial Court (Suffolk County) holds that the finding of the master on the issue of good faith is conclusive, but modifies the decree by substituting for (permitted examination of) "books and records" the words "records of all meetings of stockholders and stock and transfer books." The court says, in explanation of the modification, that jurisdiction in equity to require officers of a corporation to exhibit to a stockholder papers, books, and records is limited to those specified in General Laws, Chap. 155, Sec. 22, as amended by Chap. 172, Laws of 1923, i.e., records of meetings of stockholders and stock and transfer books, and that the right to examine other books and records is left as at common law and so that a stockholder's remedy, on being refused, is by petition for a writ of mandamus. Dennison et al. vs. Needle et al., 174 N. E. 687. M. Jacobs, of Boston, for appellants. E. A. Howe, of Boston, for appellees.

Missouri.

On the right of Missouri ancillary administrator of New York decedent dying possessed of stock in Missouri corporation to have title to such stock transferred to him. The Missouri corporation

in question has a stock transfer agency in New York City where transfers of its stock are regularly made. A stockholder died, a resident of New York State; his stock certificates were in his possession in New York at the time of his death; his estate was not indebted to any resident or citizen of Missouri nor did it owe any taxes to the state or to any political subdivision thereof; no heir, legatee, devisee, or distributee lived in Missouri. Decedent's stock was transferred (by the New York agency) to the New York executors and new certificates were issued to them. Thereafter the Missouri ancillary administrator demanded of the company in Missouri that certificates covering the shares in question be issued to him and that an accounting be made to him of dividends earned on such shares. This the company refused to do; thereupon this action was brought requiring it so to do. The Supreme Court of Missouri, in Banc, affirms the judgment of the court below sustaining the defendant corporation's motion for judgment on the pleadings. The court says that "Where there are such claims [debts due Missouri citizens] or there are taxes due this state, a different situation would no doubt exist." There is full discussion of "situs" and of other pertinent considerations and reference is made, with analyses, to numerous cases relied on by plaintiff. Two companion cases follow (same plaintiff, different estates) in which the facts are quite similar to those in the one already referred to except that the ancillary administrator's request was made before transfer was made to New York executors who, on transfer to them being refused (because of the Missouri claim), brought action in New York courts to compel transfer to them and prevailed. The Missouri court, under the full faith and credit clause of the Federal Constitution, recognizes the validity and finality of the judgments of the New York courts, and holds as it did in the principal case. Lohman vs. Kansas City Southern Railway, 33 F. (2d) 112, 117, 118. D. W. Peters, of Jefferson City, and Barnett & Hayes, of Sedalia, for appellant (in each case). Frank H. Moore, Cyrus Crane, Hugh E. Martin, and A. F. Smith, all of Kansas City (S. W. Moore, of New York City, of counsel), for respondent (in each case).

New York.

Obligation of trustees under a trust mortgage to see that the mortgage is recorded. Action by holder of trust mortgage notes against the trustee, the notes not having been paid, for the value thereof. The mortgage was made and executed in Pennsylvania; the notes were issued and are payable in that state. The mortgage had not been recorded. The trust mortgage provides that it is no part of the duty of the trustees to record the instrument; it is provided, also, that save for its gross negligence or wilful default the trustee shall not be personally liable for any loss or damage. The New York Court of Appeals reverses the judgment below for plaintiff, the judgment, says the court, resting "entirely upon the theory that it was a duty of the trustee which it owed to the noteholders to see that the mortgage was recorded, and that the failure to record the mortgage was

the neglect and carelessness of the trustee, for which it is liable to those noteholders, including the plaintiff, who have suffered damage thereby." The court says that "the duty of the trustee is measured and limited by its agreement"; that "such agreements are legal and binding, unless they are contrary to some statute or against the public policy of the state"; that the law of Pennsylvania applies to these contracts and that under such law "no liability would attach to this trustee by reason of the alleged negligence"; and, on the question of whether or not the agreement provisions relieving the trustee from the duty of recording and from personal liability save for gross negligence are against the public policy of New York, that "unless there is something immoral or fundamentally unjust in the arrangement, there is no policy of our state which forbids the enforcement of contracts or agreements which are legal according to the law of the place of performance." Benton vs. Safe Deposit Bank of Pottsville, Pa., 255 N. Y. 260, 174 N. E. 648. George N. Hamlin, of New York, for appellant. Karl R. Miner, of New York, for respondent.

Texas.

Corporation having acquired land when in good standing may sue for alleged trespass when it was in default for non-payment of taxes whether or not payment of back taxes, penalties, etc., revives its forfeited right to do business. The question here is on the right to maintain a suit. The Court of Common Appeals of Texas by answering in the affirmative one of two questions certified to it by the Court of Civil Appeals in effect reverses the judgment of the trial court and holds that the plaintiff may sue. Plaintiff was organized many years ago; while in good standing it acquired certain potential oil lands; being unsuccessful it ceased business and defaulted its taxes; its right to do business was then terminated by action of the Secretary of State, under the law (—it was not dissolved); many years later there was alleged trespass on its lands; thereafter it tendered to the Secretary of State an amount of money to cover all back taxes, interest, and penalties and asked for reinstatement of its right to do business; the payment was accepted and a reinstatement certificate was issued to it (the effectualness of the revivor is questioned by defendant, here); thereupon it brought this suit against the alleged trespassers. The court says: "We are of opinion that plaintiff in error is entitled to maintain this suit to recover the land involved, which it alleges has been unlawfully taken from it by defendants in error, because it acquired the land at a time when its current franchise taxes were fully paid up, and when it had the right to carry on its business under its charter and was in good standing, regardless of whether the payment in June, 1928, by plaintiff in error to the State of Texas of its delinquent franchise taxes and accumulated penalties, was or was not effectual to revive and restore its right to do business in this state." Federal Crude Oil Co. vs. Yount-Lee Oil Co., et al., decided February 4, 1931. Commerce Clearing House Court Decisions Reporting Service, Requisition No. 36024. Not yet officially reported.

Foreign Corporations

Arkansas.

Purchasing and assembling in state before shipping to headquarters outside the state constitutes doing business in state. This is an action by the State of Arkansas (for the benefit of a county) against a corporation, foreign to Arkansas, alleged to have been doing intrastate business in the state, for amount of the penalty ($1,000) for failure to file with the Secretary of State a copy of its charter or articles of incorporation as prescribed by § 1826 of the C. & M. Digest. The company had two established places of business in Arkansas, each in charge of a "manager" (one was assisted part of the time by a field agent) who in each case has purchased milk, cream, poultry, and eggs, or other produce for the company, paying therefor with company checks (Missouri bank) signed by himself as manager (or agent). Sometimes the purchased produce was shipped in original packages immediately to the company's home office in Missouri but generally it was assembled and stored for a short time until a sufficient quantity had been accumulated for economic truck or rail shipment (two or three times a week) to Missouri. One of the managers was paid a salary; the other was paid a salary part of the time and was on a commission basis part of the time. Affirming the court below which found that the company was "doing business" in Arkansas and rendered judgment against it for the $1000 penalty the Arkansas Supreme Court says: "We do not think that all of these ear-marks indicating that the business was local and intrastate can be converted into an exclusively interstate transaction by the mere fact that at a later date the goods purchased would be shipped to the purchaser at its headquarters in another state." Sunlight Produce Company vs. State, The Arkansas Law Reporter (1931), page 274. Shouse & Rowland, of Harrison, for appellant. Jack Holt and V. D. Willis, of Harrison, for appellee.

Interstate commerce is not to be interfered with by a state. The Arkansas statutes provide that a foreign corporation "doing business in this state" shall file with the Secretary of State a copy of its charter (and other data), shall designate its general office or place of business within the state, and shall name an agent on whom process may be served; penalty (inter alia) denial of right to enforce, either at law or in equity, a contract made in the state. Here, a contract of sale and purchase was entered into (where, is not evidenced) between parties in Illinois and in Arkansas, by which goods were sold and delivered on board cars outside of Arkansas, by the Illinois parties to those in Arkansas, weekly payments to be made according to the vendee's cash sales and collections, the privilege of return of unsold goods in the hands of the vendee at the termination of the contract being reserved. It was urged that the Illinois parties were acting as agents, merely, for an Illinois manufacturing corporation which (admittedly) was not qualified in Arkansas, and that under the law, as briefly mentioned

te of incorporation

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le for issuance of preferred stock in series, as needed, with to fix interest rates on each separate series, in accordance ue? . . . . that provision is made for classes of non-voting y is given to board of directors to fill vacancies in its mem- a quorum remains? . . . . that provision is made for alter- t voting rights are conferred on holders of the company's s given to create a voting trust? . . . . that provision is us part of the consideration received for stock, either par uorum of board of directors is fixed at less than a majority? name of residents of other states will not be subject to an ncorporation? . . . . that provision is made for retirement rs without necessity of calling a general stockholders' meet- is made, if the company is to be a "wasting assets" corpora- , for declaring dividends out of assets in excess of capital as

When your client's business makes it desirable to incorporate any such provision in a charter, or when you wish carefully to weigh the possibilities for your client of any such provisions, The Corporation Trust Company can bring you the very latest and soundest precedents to study. Employing the services of The Corporation Trust Company in incorporation, means that the attorney is giving himself access to the best examples of modern corporation practice, and giving his client a corporate structure in line with the best experience.

above, "this suit could not be maintained, as the statutes of Arkansas expressly forbade it." The United States Supreme Court, reversing the state courts which found in favor of the defendants, says that, regardless of any status of agency, as the business covered by the contract was of a strictly interstate nature the right to come into the state to collect the amount which had become due in such transaction is not to be obstructed by the state, and is "of the opinion that the provisions of the statutes of Arkansas, as applied in this case, are in conflict with the commerce clause" of the Federal constitution. Furst & Thomas, Partners, vs. Brewster et al., U. S. Supreme Court, Docket No. 76, October Term, 1930, decided February 25, 1931. Not yet officially reported.

New York.

Maintenance of extensive business soliciting office in New York by foreign corporation not sufficient, without more, to give Federal District Court in New York jurisdiction in suit against it in patent infringement. U. S. Judicial Code § 48 (U. S. Code, Title 28, § 109) gives jurisdiction in patent infringement suits to the U. S. District Court of the district in which the defendant corporation "shall have committed acts of infringement and have a regular and established place of business." Defendant here is an Iowa corporation engaged in the business of manufacturing elevator accessories within that state. It has a fully equipped business soliciting office in New York City. All orders are approved and accepted in Iowa. No credit determinations are made by New York employees nor are any collections made by them. The signalling system involved in this action was installed, tested, and put in operation in New York by employees, representatives, and engineers of the defendant. The U. S. District Court, Southern District of New York, grants the motion to quash the service and dismiss the bill, for lack of jurisdiction. The court says: "The weight of authority seems to hold that the maintenance of an office by a foreign corporation, however long continued and however well equipped, to be used by its employees in soliciting business and doing things incidental to procuring orders for goods manufactured and sold by such corporation in another jurisdiction does not constitute the maintenance of a regular and established place of business within the meaning of 28 U. S. C. A. Sec. 109." Elevator Supplies Co., Inc., vs. Wagner Manufacturing Co., decided February 2, 1931. Commerce Clearing House Court Decisions Reporting Service, Requisition No. 35612. Not yet officially reported.

Is purchasing, merely, in New York, "doing business" in that state by a corporation foreign thereto? The New York Supreme Court, Appellate Division, First Department, reversing the court below which denied the motion of a foreign corporation not licensed to do business in New York to vacate the service of summons on it, says: "The plaintiff's affidavit that it had formerly made space available for the use of defendant's buyers is insufficient to show that at the time of the service of summons the defendant had any established office in this state.

Furthermore, even if it be assumed that the defendant at the time of the service used space in the office of a resident buyer, this does not appear to have been done except on occasions. The decision in Hartstein vs. Seidenbach's, Inc., 229 N. Y. Sup. 404 (THE CORPORATION JOURNAL for August, 1927, page 15), was based upon the existence of an established place of business in this jurisdiction, coupled with announcements to that effect upon the defendant's letterheads. The proof here falls considerably short of that. The mere making of purchases, even if systematic, is insufficient to constitute doing business for the purpose of authorizing the service of process. Rosenberg vs. Curtis, 260 U. S. 516 (THE CORPORATION JOURNAL for February, 1923, page 162). To the extent that Fleischmann Construction Co. vs. Blauner's, 190 App. Div. 95, 179 N. Y. Sup. 193 (THE CORPORATION JOURNAL for February, 1920, page 115), decided previously, is to the contrary, it may not be followed, since it is the duty of state courts to yield to the views of the United States Supreme Court upon questions of this character." Samuel Hoffman, Inc., vs. Mode Shoppe, Inc., 247 N. Y. Sup. 266. White & Case, of New York City (Graham D. Mattison, of New York City, of counsel), for appellant. Kurz & Kurz, of New York City (Michael Kurz, of New York City, of counsel), for respondent.

Ohio.

Leasing of motion picture films for exhibition in Ohio without more does not constitute "doing business" in Ohio. Action is by a New York corporation not licensed to do business in Ohio to recover certain amounts alleged to be due under contracts of lease of moving picture films with an Ohio corporation, for exhibition in Ohio and elsewhere. Below, judgment was entered for the defendant on the ground that as plaintiff was an unlicensed foreign corporation engaged in business in Ohio it could not maintain the action. The Ohio Court of Appeals reverses, saying that the plaintiff's business in Ohio is in interstate commerce strictly, and so that there is no inhibition on its use of the state courts to enforce its contracts until it has qualified. The court says that it is immaterial where the contracts were signed. Each contract was for a five-year lease of positive prints of certain motion picture films to be shipped from without the state of Ohio, payable in advance or C. O. D., for exhibition purposes by the lessee in Ohio and elsewhere, a certain percentage, also, of the amounts realized from the showings to be paid by the lessee. Advertising matter and certain accessories were supplied by the lessor on substantially like terms; a lien was retained by the lessor for unpaid rentals; lessee is protected in exclusive exhibition; lessor to use good offices with Board of Censors, if necessary. "Lessor did not engage to perform, nor has it performed any duties in this behalf in Ohio. All its activities are identified with and confined to its New York office," Short Films Syndicate, Inc., plaintiff in error vs. Standard Film Service Co., defendant in error. Commerce Clearing House Court Decisions Reporting Service, Requisition No. 34833 (not yet officially reported). Boer, Arnold & Tobias, of Cleveland, for plaintiff in error. L. M. Rich, of Cleveland, for defendant in error.

Oregon.

License fee requirements for appointment of additional state agents for fire insurance companies. The law here involved provides that a fire insurance company may appoint an agent in each city, town, or village (fee $2); in a city of 50,000 or more inhabitants an additional agent may be named (same fee); additional agents may be appointed on payment of an annual license fee of $500 per agent. Previously the statute was assailed by an individual who, seeking an agency license to act for a foreign fire insurance company, questioned the right of the state to exact the $500 fee. No company was a party to that action. The United States Supreme Court, affirming the judgment of the State Supreme Court sustaining the law said in effect that as the requirement is one imposed on the corporation, there is no interference with any rights of an individual applicant. (Herbring vs. Lee, 269 P. 236, 280 U. S. 111, THE CORPORATION JOURNAL for June, 1929, page 447, and for January, 1930, page 87.) Now, a foreign company brings a three-judge case (United States District Court, District of Oregon), seeking an injunction against enforcement of the law to the extent of the $500 license fee requirement. The injunction is granted. The court says that if the large fee provision has application to foreign corporations only there is unjust discrimination in favor of domestic corporations prohibited by the 14th Amendment to the Federal Constitution, such denial of equal protection under the laws being none the less prohibited though the questioned provision be viewed as a condition precedent to entry into the state because of foreknowledge of the requirement, since there must be no unjust discrimination in any event after admission, whether by law in force at the time the foreign corporation is granted its license or by law subsequently enacted. The court further says that it feels called on to add that if the provision in question has application to all fire insurance companies whether foreign or domestic the imposition of so large a fee for additional agents "is an unreasonable and unconstitutional interference with the right of a fire insurance company to transact business." Northwestern National Insurance Co. (of Wisconsin) vs. Lee, Oregon Insurance Commissioner, decided February 12, 1931 (U. S. Daily, March 7, 1931, page 6), not yet officially reported.

Pennsylvania.

A foreign corporation practically all of whose "office" activities are carried on in Pennsylvania is "doing business" in that state. Defendant, here, is a Delaware corporation, not licensed to do business in Pennsylvania, which operates a mine in Utah. It has no agents soliciting orders for its products in Pennsylvania. It has long maintained an office in Philadelphia. "Its name is on the office door and on the directory of the building—also in the Philadelphia telephone directory. All the stockholders and directors meetings are held in its Philadelphia office. The secretary and treasurer reside in that city. All the books, papers and documents, with the exception of certain deeds and

leases, are kept there and all the arrangements for financing the company are made there, including the borrowing of money from banks in that city on notes of the company executed, delivered and made payable there, the proceeds of which are deposited to the company's credit in a Philadelphia bank. Stock certificates are issued and transferred in Philadelphia. Some of the company's contracts are executed there and all its correspondence is there carried on. Its general business policy in there decided upon. The mine is operated under orders of the board of directors which meets in Philadelphia. From the above, it is apparent that the general executive business of the defendant is carried on at its Philadelphia office and that the company is managed from there." The Supreme Court of Pennsylvania reversing the court below, which set aside the service of summons on the corporation, says, in addition to the matter quoted above, that "it is manifest that the defendant was doing business in Philadelphia and is liable to the service of process there." Mingus and Rutter, Jr., co-partners vs. Florence Mining & Milling Co., Commerce Clearing House Court Decisions Reporting Service, Requisition No. 35181 (not yet officially reported).

On "doing business" by a foreign corporation under an exclusive sales agency contract. A Connecticut corporation, not authorized to do business in Pennsylvania, entered into a contract with a Pennsylvania "company" by which the latter was given the exclusive right to sell the Connecticut corporation's product, a combustion or blower device and accessories, in Pennsylvania and in other states and parts of states. Goods were shipped from time to time to Philadelphia, delivered f. o. b. in Connecticut or Massachusetts, on consignment, to be sold (a minimum was stipulated) by the consignee, title to remain in the consignor until payment was made as security therefor, payment being required within 30 days after sale by the consignee, he being charged as purchaser, at contract discounts, at the time of a sale by him. Consignor was to see that consignee was supplied at all times with a sufficient number of devices to meet the anticipated requirements for two months business. The consignee received and sold the blowers on his own account as a jobber and not as agent of the consignor which had no office, place of business, or agent, in Pennsylvania and had no voice in the sale of goods by the consignee. The only business the consignor had in Pennsylvania was with the consignee. Action by the manufacturer against the jobber for amounts alleged to be due under the contract. Plaintiff prevailed below; judgment now affirmed by the Pennsylvania Supreme Court. Into the merits we do not go. One defense urged was that plaintiff, a foreign corporation, was not entitled to maintain the action as it was "carrying on business" in Pennsylvania without having qualified. It is held that under the conditions stated the Connecticut corporation was not doing business in Pennsylvania and so was not estopped from suing. International Fuel Service Corporation vs. W. I. Stearns, decided Feb. 2, 1931. Commerce Clearing House Court Decisions Reporting Service Requisition No. 35635. Not yet officially reported.

Oregon.

License fee requirements for appointment of additional state agents for fire insurance companies. The law here involved provides that a fire insurance company may appoint an agent in each city, town, or village (fee $2); in a city of 50,000 or more inhabitants an additional agent may be named (same fee); additional agents may be appointed on payment of an annual license fee of $500 per agent. Previously the statute was assailed by an individual who, seeking an agency license to act for a foreign fire insurance company, questioned the right of the state to exact the $500 fee. No company was a party to that action. The United States Supreme Court, affirming the judgment of the State Supreme Court sustaining the law said in effect that as the requirement is one imposed on the corporation, there is no interference with any rights of an individual applicant. (Herbring vs. Lee, 269 P. 236, 280 U. S. 111, THE CORPORATION JOURNAL for June, 1929, page 447, and for January, 1930, page 87.) Now, a foreign company brings a three-judge case (United States District Court, District of Oregon), seeking an injunction against enforcement of the law to the extent of the $500 license fee requirement. The injunction is granted. The court says that if the large fee provision has application to foreign corporations only there is unjust discrimination in favor of domestic corporations prohibited by the 14th Amendment to the Federal Constitution, such denial of equal protection under the laws being none the less prohibited though the questioned provision be viewed as a condition precedent to entry into the state because of foreknowledge of the requirement, since there must be no unjust discrimination in any event after admission, whether by law in force at the time the foreign corporation is granted its license or by law subsequently enacted. The court further says that it feels called on to add that if the provision in question has application to all fire insurance companies whether foreign or domestic the imposition of so large a fee for additional agents "is an unreasonable and unconstitutional interference with the right of a fire insurance company to transact business." Northwestern National Insurance Co. (of Wisconsin) vs. Lee, Oregon Insurance Commissioner, decided February 12, 1931 (U. S. Daily, March 7, 1931, page 6), not yet officially reported.

Pennsylvania.

A foreign corporation practically all of whose "office" activities are carried on in Pennsylvania is "doing business" in that state. Defendant, here, is a Delaware corporation, not licensed to do business in Pennsylvania, which operates a mine in Utah. It has no agents soliciting orders for its products in Pennsylvania. It has long maintained an office in Philadelphia. "Its name is on the office door and on the directory of the building—also in the Philadelphia telephone directory. All the stockholders and directors meetings are held in its Philadelphia office. The secretary and treasurer reside in that city. All the books, papers and documents, with the exception of certain deeds and

leases, are kept there and all the arrangements for financing the company are made there, including the borrowing of money from banks in that city on notes of the company executed, delivered and made payable there, the proceeds of which are deposited to the company's credit in a Philadelphia bank. Stock certificates are issued and transferred in Philadelphia. Some of the company's contracts are executed there and all its correspondence is there carried on. Its general business policy in there decided upon. The mine is operated under orders of the board of directors which meets in Philadelphia. From the above, it is apparent that the general executive business of the defendant is carried on at its Philadelphia office and that the company is managed from there." The Supreme Court of Pennsylvania reversing the court below, which set aside the service of summons on the corporation, says, in addition to the matter quoted above, that "it is manifest that the defendant was doing business in Philadelphia and is liable to the service of process there." Mingus and Rutter, Jr., co-partners vs. Florence Mining & Milling Co., Commerce Clearing House Court Decisions Reporting Service, Requisition No. 35181 (not yet officially reported).

On "doing business" by a foreign corporation under an exclusive sales agency contract. A Connecticut corporation, not authorized to do business in Pennsylvania, entered into a contract with a Pennsylvania "company" by which the latter was given the exclusive right to sell the Connecticut corporation's product, a combustion or blower device and accessories, in Pennsylvania and in other states and parts of states. Goods were shipped from time to time to Philadelphia, delivered f. o. b. in Connecticut or Massachusetts, on consignment, to be sold (a minimum was stipulated) by the consignee, title to remain in the consignor until payment was made as security therefor, payment being required within 30 days after sale by the consignee, he being charged as purchaser, at contract discounts, at the time of a sale by him. Consignor was to see that consignee was supplied at all times with a sufficient number of devices to meet the anticipated requirements for two months business. The consignee received and sold the blowers on his own account as a jobber and not as agent of the consignor which had no office, place of business, or agent, in Pennsylvania and had no voice in the sale of goods by the consignee. The only business the consignor had in Pennsylvania was with the consignee. Action by the manufacturer against the jobber for amounts alleged to be due under the contract. Plaintiff prevailed below; judgment now affirmed by the Pennsylvania Supreme Court. Into the merits we do not go. One defense urged was that plaintiff, a foreign corporation, was not entitled to maintain the action as it was "carrying on business" in Pennsylvania without having qualified. It is held that under the conditions stated the Connecticut corporation was not doing business in Pennsylvania and so was not estopped from suing. International Fuel Service Corporation vs. W. I. Stearns, decided Feb. 2, 1931. Commerce Clearing House Court Decisions Reporting Service Requisition No. 35635. Not yet officially reported.

Taxation

California.

Tax on property of companies transporting property by trucks measured by gross receipts, including those for handling U. S. mail, held valid. The California Constitution provides for the imposition of a tax equal to five per centum of the gross receipts from the business on the franchises, trucks, auto trucks, and other property used exclusively in the operation of their business of companies operating within the state trucks or auto trucks between fixed termini or over a regular route for the transportation of property. The United States Supreme Court, affirming the judgment of the California Supreme Court, sustains the tax. No question relative to taxation of property outside the state or to interference with interstate commerce arose. The State Supreme Court has declared the tax to be one on property; it is exclusive of all other taxation; the funds arising therefrom are assigned to the maintenance of roads. The classification is held to be neither arbitrary nor unreasonable. The Court says: "The prescribed method of assessment was permissible and the mere fact that petitioner was required to pay a higher rate upon property devoted to his peculiar business than was demanded of property not so employed is not important. Nor do we think petitioner's property was entitled to exemption from state taxation because used in connection with the transportation of the mails. There was no tax upon the contract for such carriage; the burden laid upon the property employed affected operations of the Federal Government only remotely." Alward vs. Johnson, Docket No. 41, October Term, 1930, decided February 24, 1931. Not yet officially reported. Decision below digested in the May, 1930, JOURNAL, page 185.

Illinois.

Law imposing franchise tax on foreign corporations held invalid. This is the case that was once before the United States Supreme Court (282 U. S. 10—digested in the January JOURNAL, 1931, page 304) which court remanded the cause to the United States Circuit Court of Appeals, Seventh Circuit, with directions to dismiss the appeal to that court for want of jurisdiction, the District Court judge having failed to call to his assistance two other judges, on the original hearing, and thus create a three-judge court. Now, the United States District Court, Southern District of Illinois, as a three-judge court, grants the permanent injunction prayed for restraining the state tax authorities from collecting a foreign corporation annual license fee or franchise tax assessed against plaintiff. The questioned law (R. S. Ch. 32, § 105) provides for the imposition of a franchise tax based on issued capital stock apportioned to use thereof in the state, such tax however not to be less "than that required by this Act of corporations having no property or business in this State," i.e., by R. S. Ch. 32, § 107, which provides for a tax at sliding scale rates based on total issued capital stock with a maximum tax of $1,000 on corporations having issued capital stock

of over $20,000,000. Plaintiff falls within the $1,000 tax class under §107. Computed under § 105 the tax at issue would be $135.21. The court says "the question involved has been definitely settled by the decision of the Supreme Court in the Cudahy Packing Co. case, 278 U. S. 460" (THE CORPORATION JOURNAL for April, 1929, page 403). St. Louis Southwestern Ry. Co. vs. Stratton, decided, per curiam, March 7, 1931. U. S. Daily, March 16, 1931, page 4.

Montana.

Foreign corporation law basing increase-in-capital-used-in-state fee on proportion of authorized capital stock held invalid. Chapter 95, Montana Laws of 1925, provides for the imposition and payment of a charter-filing fee by a foreign corporation desiring to enter the state for the purpose of transacting intrastate business therein based "on the proportion of its authorized capital stock then or thereafter to be represented by its property and business in Montana" at sliding scale rates, with a minimum stated. Based on required annual returns any increase in the proportion of authorized capital stock so represented as shown thereby is similarly and correspondingly taxed, the tax being imposed de novo on the new proportion, credit being allowed for payments previously exacted. In 1929 the first annual report, showing such an increase, all the property of a railroad company engaged in both intrastate and interstate business in Montana having been acquired, was filed by plaintiff, a foreign corporation qualified in 1927 to do business in Montana but then owning no property in the state and transacting no business therein. This report shows that less than one-half of the corporation's authorized capital stock had theretofore been issued. Having paid, under protest, the demanded increase "additional fee" as computed under the law plaintiff brought this action to recover, questioning the validity of the law, and prevailed, below. The Supreme Court of Montana, deeming it unnecessary to determine the exact nature of the questioned tax, that is, whether it be an admission fee or otherwise, holds the act invalid "with respect to corporations in the class to which plaintiff belongs," that is, to corporations foreign to Montana, and all of whose property is not located in and all of whose business is not conducted within Montana, and all of whose authorized capital stock has not been issued, as being in contravention of the commerce and due process of law clauses of the Federal Constitution. However, the court holds, and modifies the judgment directing refund accordingly, that as the 1925 Act is unconstitutional, applied to plaintiff, as to it and to other corporations similarly situated, the 1925 Act never existed, and so, as such 1925 Act repealed the 1923 Act, the repeal was ineffective and therefore the 1923 Act is still in force, as to plaintiff, and directs that its tax on the increase referred to be computed under the terms of the 1923 Act which designate as the basis, both for the initial fee and the fee covering an increase, the proportion of capital stock (not "authorized capital stock") represented in Montana. The 1925 Act, now declared unconstitutional as to plaintiff and other corporations similarly situated, provides that for purposes of the fees no-par

value stock shall be considered to be of the par value of $50 per share—(the court calls attention to the fact that such a provision has been held to be "arbitrary, discriminatory and invalid"). The sole reference to no-par value stock in the 1923 Act is that no foreign corporation having such stock shall be permitted to enter the state for the transaction of business—(in passing, the court remarks that such a provision is unconstitutional in respect to corporations engaged in interstate commerce). In its report plaintiff valued its no-par value stock at $1 per share. The court finds that capital stock, as the prime basis of the tax and for purposes of the tax, means "value of capital stock," that is, net assets value, and (in the disposition of this case, at least) that the reported value of the outstanding shares is to be taken. C. M. & St. P. & P. R. Co. vs. Harmon, Secy. of State, decided January 17, 1931, Commerce Clearing House Court Decisions Reporting Service, Requisition No. 34452. L. A. Foot, T. H. MacDonald, and L. V. Ketter, for the Attorney General, for appellant. Murphy & Whitlock, of Missoula, and H. H. Field, of Chicago, Illinois, for respondent.

CORPORATE MEETINGS HELD

During the past few weeks meetings of the corporations named below, among many others, have been held at some one of the offices of The Corporation Trust Company.

United Corporation. Marine Midland Corporation. Northern States Power Company. Freeport Texas Company. Drug, Incorporated. United Carbon, Inc. Transcontinental Air Transport, Inc. North American Aviation, Inc. International Match Corporation. The Quaker Oats Company. New York Air Brake Company. Liggett and Myers Tobacco Company. American Hawaiian Steamship Company. P. Lorillard Company. General Outdoor Advertising Co., Inc. United Fruit Company. Niles-Bement-Pond Company. Pratt and Whitney Company. General Baking Corporation. Continental Baking Corporation. United Founders Corporation. United States Electric Power Corporation.

Some Important Matters for April and May

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALABAMA—Annual Franchise Tax Payable April 1 but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

ARKANSAS—Income Tax Return due on or before May 15.—Domestic and Foreign Corporations.

COLORADO—Annual License Tax due on or before May 1.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due after April 1 and before July 1.—Domestic Corporations.

DOMINION OF CANADA—Annual Summary due between April 1 and June 1.—Domestic Companies having capital stock.

Annual Income Tax Return due on or before April 30.—Domestic and Foreign Corporations.

FLORIDA—Annual List of Officers and Directors due on or before June 1.—Domestic and Foreign Corporations.

MAINE—Annual Tax Return due on or before June 1.—Domestic Corporations.

MASSACHUSETTS—Excise Tax Return due between April 1 and April 10.—Domestic and Foreign Corporations.

MISSOURI—Annual Franchise Tax due on or before May 15.—Delinquent after June 1.—Domestic and Foreign Corporations.

Income tax due on or before June 1.—Domestic and Foreign Corporations.

MONTANA—Annual statement due in April or May.—Foreign Corporations.

Annual License Tax based on net income due between June 1 and June 15.—Domestic and Foreign Corporations.

NEBRASKA—Statement to Tax Commissioner re: stockholders residing in Nebraska, due on or before April 15.—Foreign Corporations.

NEW JERSEY—Annual Franchise Tax Return due on or before first Tuesday of May.—Domestic Corporations.

NEW YORK—Return of Information at Source due on or before April 15.—Domestic and Foreign Corporations.

NORTH CAROLINA—Annual Report (Capital Stock and Franchise Tax Report) due on or before May 1.—Domestic Corporations.

RHODE ISLAND—Semi-Annual Report to Chief Factory Inspector due in April and October.—Domestic and Foreign Corporations.

TENNESSEE—Annual Excise Tax Report due on or before May 1.—Domestic and Foreign Corporations.

TEXAS—Annual Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

VERMONT—List of Stockholders due on or before April 5.—Domestic and Foreign Corporations.

VIRGINIA—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

WEST VIRGINIA—Annual Report due in April.—Foreign Corporations.

WISCONSIN—Income Tax due on or before June 1.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any one of which it is always glad to send without charge to readers of The Journal:

Incorporation in Canada Under the Dominion Act. Explains the procedure for incorporation of Canadian companies, the requirements, taxes, maintenance of office, etc., and all the special features of the Dominion Companies Act. Attorneys with a client who may, because of tariff barriers, be considering the organization of a Canadian company to conduct the company's Canadian or export business, will find this pamphlet extremely useful.

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

What Constitutes Doing Business. (Revised to April, 1930). A 208-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them also accessible either by case name or topic.

Questionnaire on Business Outside State of Organization. This is a form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.

Why a Transfer Agent? The question of why corporations, even those of small capitalization or with inactive or closely held stock, are safer when their stock records are in the hands of an experienced transfer agent is answered in this pamphlet by actual incidents from the experiences of different corporations.

Why Corporations Leave Home. This is an informal discussion, from the business man's point of view and in layman's language, of why so many business companies are organized under the laws of Delaware instead of in their home states. While primarily for laymen, lawyers also may find this pamphlet useful when considering the matter of what state to choose for incorporation of a client's business.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

Special Reports. When cases are decided that seem to be of some particular interest or significance in connection with the matter of doing business by foreign corporations, The Corporation Trust Company sometimes issues one of these special reports. One on the Southwest Company case is now available.

Transfer Requirements Chart. This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfer are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.